

REMARKS

Presently, claims 1, 5-7, 9-10, 14, 18-20, 22-31, 33-43 and 45-67 are pending in the application. Claims 1, 5-6, 14, and 31 were amended in this response. Claims 2-4, 8, 11-13, 15-17, and 32 were canceled, without prejudice. No new matter was introduced as a result of the amendments. Entry of the amendments and favorable reconsideration are earnestly requested.

CLAIM REJECTIONS – 35 U.S.C. §103

Claims 1-3, 9-14, 17-20, 29-37, 40-41, 45, 47-48, 56-62 and 65 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat. Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740);

Claims 4, 6, 25, 38, 43, 53, 55 and 67 were rejected under 35 U.S.C. 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and further in view of Crystal et al. (US Patent Pub. 2003/0171833);

Claims 5, 7, 15, 16, 28, 42, 49 and 64 were rejected under 35 U.S.C. 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat. Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and Shuster et al. (US Pat. Pub. No. 2004/0027271);

Claims 22, 23, 50 and 51 were rejected under 35 U.S.C. 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat. Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and Burgess (US Patent No. 6,720,876);

Claims 24, 52 and 54 were rejected under 35 U.S.C. 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat. Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and Hampton et al. (US Pat No. 6,252,522);

Claims 26, 27, 46 and 66 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat.

Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and Maggio (US Patent No. 5,489,096); and

Claim 63 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US Patent Pub. 2001/0028301), in view of Swartz et al (US Pat. Pub. No. 2003/0132298) and further in view of Shotey et al. (US Pat. Pub. No. 2002/0004740) and Steinbrecher (US Patent Pub. 2003/0061002). Applicant respectfully traverses these rejections.

Regarding independent claims 1 and 31, the prior art, alone or in combination, fails to teach or suggest the features of “detecting product data in the portable monitor, the product data being contained in a product signal received in the wireless receiver from a predetermined signal transmitter proximal to a respective product, the product data representing the respective product, the product signal having a signal strength selected so that the product data is detectable by the portable monitor only when in a predetermined proximity to the predetermined signal transmitter; detecting commercial establishment data in an acoustic commercial establishment signal transmitted within a commercial establishment in which the product is located, the commercial establishment data representing the commercial establishment; [and] storing first time data on a predetermined time base in association with the product data representing timing of proximity to the product.”

Regarding Geiger, the document teaches a device that is *not* carried on the person of the participant, but is attached to a shopping cart ([0008]; [0032]) so that promotional material may be forwarded to the device ([0054]). In contrast to the present claims, Geiger is not concerned with tracking the time of a user's proximity to a product (and hence determining product exposure), but merely forwards advertisements and other promotions to the shopping cart, which do not necessarily have anything to do with the proximal product (see, e.g., [0058]). More importantly, Geiger does not disclose detecting commercial establishment data in an acoustic commercial establishment signal transmitted within a commercial establishment in which the product is located, the commercial establishment data representing the commercial establishment. Swartz and Shotey fail to solve these deficiencies as well.

Crystal also does not solve the deficiencies of Geiger, Swartz and Shotey. While Crystal discloses the transmission of location codes ([0040]), these codes are in relation to a portable device's location in relation to an A/V receiver that is receiving media data ([0035-37]). Crystal

is wholly silent regarding the monitoring of product data and the proximal location of a user to the product transmitter. Additional, there is no apparent reason why one skilled in the art would combine the teaching of Crystal with Geiger in the manner suggested in the Office Action, as the Office Action fails to explain how a media receiver (per Crystal) would be incorporated into the shopping cart of Geiger or the configurations disclosed in Swartz and Shotey. Regarding the Office Action's comment that the motivation to combine is rooted in "cost effective sound wave technology", the Office provides no support for this conclusion; the fact that additional transducers are required to obtain *some* type of commercial establishment data from acoustic waves suggests that the opposite is, in fact, the case.

Schuster also does not solve the deficiencies of Crystal and Geiger. Similar to Crystal, Schuster discloses the proximity of a user to a media receiver, and has nothing to do with monitoring of product data and the proximal location of a user to the product transmitter. Just as in Crystal, there is no apparent reason why one skilled in the art would combine Schuster with Geiger in the manner suggested in the Office Action.

Burgess and Hampton also do not solve the deficiencies of the art discussed above. Burgess deals with the tracking of multiple objects utilizing GPS, etc. systems (col. 2, lines 12 et al.) where the location of an object relative to a transmitter is known and fixed (col. 3, lines 40-65). Regarding Hampton, the document merely discloses a manual method for recording exposure to a billboard, where the user would manually depress a button to indicate exposure (col. 6, lines 9-16). For at least these reasons, Applicants submit the rejection to claims 1-20, 22-43 and 45-47 should be withdrawn.

Regarding independent claims 48 and 59, the prior art, alone or in combination, fails to teach or suggest the features of "storing product location data representing a location of a predetermined product; monitoring a location of a participant in market research by means of a portable monitor carried on the person of the participant; storing participant location data representing a plurality of locations of the participant monitored by means of the portable monitor; and processing the participant location data and the product location data to produce product proximity data indicating exposure of the participant to the predetermined product." as recited in independent claims 48 and similarly recited in independent claim 59. None of the cited references disclose the monitoring of participant location *in the portable monitor*. For at

least these reasons, Applicant respectfully submits the rejection to claims 48-67 should be withdrawn.

In light of the arguments provided above, Applicants respectfully submit the rejections are improper and should be withdrawn. Applicants respectfully submit that the patent application is in condition for allowance and request an early Notice of Allowance. The Commissioner is authorized to charge and credit Deposit Account No. 120913 for any additional fees associated with the submission of this Response. Please reference docket number 52579-113197 (P0125A).

Respectfully submitted,

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